IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5939 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESH @ KAMLI DAYARAM JASWANI SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5939 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR RM CHAUHAN, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 10/09/2003

ORAL JUDGEMENT

By way of filing this Special Civil Application, the petitioner has challenged the order passed on 10th April, 2003, by the Police Commissioner, City of Ahmedabad, in exercise of powers conferred upon him under sec.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short) directing the detention of the petitioner as "bootlegger" within the

meaning of PASA Act, and in pursuance of the said order, the petitioner was actually detained in custody from 10th April, 2003.

2. The grounds placed on record and served upon the petitioner for detention reveal that the detaining authority took into consideration two aspects of the matter. Firstly registration of three crimes against the petitioner under the Bombay Prohibition Act for the possession of foreign liquor and in camera statements of witnesses recorded by proposing authority on 7th April, 2003, and verified by detaining authority on 8th April, 2003. This statements reveals incidence occurred on 18th March, 2003, and 8th March, 2003. In one of the incident occurred on 18th March, 2003, the witness was beaten on suspicion that the witness was offering information to the police as to the illegal activities of the petitioner. While in the second incident which occurred on 8th March, 2003, the witness was forced by petitioner to use vehicle for illegal activities of selling liquor, and on refusal, the witness was beaten by the petitioner. From the above material, the detaining authority reached to the subjective satisfaction that there is no other alternative except to detain the petitioner under PASA Act to prevent the illegal activities of the petitioner.

3. Learned advocate Mr.M.R.Prajapati for the petitioner and learned AGP Mr.R.M.Chauhan were heard at length.

4. Various contentions raised on behalf of the petitioner and controverted by learned AGP. Out of rival contentions raised, it appears that, this special civil application can be disposed of on the ground that whether the order impugned is vitiated by non application of mind by the detaining authority. Undoubtedly, as averred by the detaining authority in the grounds while the order of detention came to be served upon the petitioner who was under judicial custody in one of the offences registered against him. He was not arrested in one of the offences out of three offences registered against him while the petitioner was on police remand in the third offence. The detaining authority stated that in the case wherein the petitioner was on remand, on completion of remand period, he was likely to be produced before the court, and on filing bail application, he was likely to be released on bail. While in respect of other offence wherein the petitioner was absconding and not arrested the detaining authority reached to the subjective satisfaction that the petitioner was likely to be arrested and was likely to be released on bail.

Thereafter the detaining authority further reached to the subjective satisfaction that on being released on bail by the court the petitioner was likely to continue his bootlegging activities and so order of detention came to be passed. The facts of this case are squarely covered by a decision of Apex Court in the matter of Amritlal & others Vs. Union Government, through Secretary, Ministry of Finance and others as reported in AIR 2000 SC 3675 and in this case there was no material reach to the subjective satisfaction that on completion of police remand the petitioner was likely to be released on bail. There was no any material reach to the subjective satisfaction that in third case also wherein he was in judicial custody he was likely to be released on bail as well as in second case he was likely to be arrested, and on being arrested on filing bail application, the petitioner was likely to be released on bail. According to the Apex Court, as observed in the above said decision of Amritlal (supra), there must be some cogent material before the detaining authority to come to this conclusion. On going through the grounds served upon the petitioner carefully, and on going through the record of the case as available with this Court, it clearly appears that there is no material at all before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail and thereafter he was likely to continue his illegal activities. The order impugned in this special civil application is required to be quashed on this ground alone.

5. In the result, this special civil application is allowed. The order of detention passed by Police Commissioner, Ahmedabad City, on 10th April, 2003, in exercise of the powers conferred upon him under sec.3(2) of the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule is made absolute with no order as to costs. Direct service is permitted.

(J.R. Vora, J.)

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